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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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USA BASEBALL, THE NATIONAL HIGH SCHOOL
BASEBALL COACHES ASSOCIATION, DR. PETER
BERG, JUAN HERNANDEZ, DENNIS CANALE, MEL
ZITTER, MICHAEL CRUZ, TITO NAVARRO, JOHN
TORRES, EASTON SPORTS, INC., WILSON
SPORTING GOODS CO., RAWLINGS SPORTING
GOODS COMPANY, and HILLERICH & BRADSBY
COMPANY, INC.

Plaintiffs,

- against -

Civil Action No. 07-CV-3605

CITY OF NEW YORK,

Defendant.

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**PLAINTIFFS' RULE 56.1 STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Plaintiffs' submit this Statement of Undisputed Material Facts, pursuant to Rule 56.1 of the Local Rules of the United States District Court for the Southern District of New York, and in support of its Motion for Summary Judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure. The exhibits referred to herein are attached to the Memorandum of Law in Support of Plaintiffs' Motion.

Undisputed Facts Regarding Baseball Safety

1. Injury statistics indicate that baseball is one of the safer sports. See Verhalen Decl. at p. 8, Chart 2 (Ex. 2).
2. Batted ball injuries represent a very small percentage (less than 10%) of total injuries in baseball itself. See Verhalen Decl. at p. 8 (Ex. 2).
3. The absolute rate of serious injuries to pitchers from batted balls is on the order of one in a million participants. 10/23/06 Tr. at 137 (NYC0000339) (Ex. 14).
4. The injury rate from batted balls has either declined or been steady since at least the early 1990s. Verhalen Decl. at pp. 10-11, Charts 6, 7 (Ex. 2); Kirby Decl. at ¶ 5 (Ex. 1).
5. The National Collegiate Athletic Association (“NCAA”) and National Federation of High Schools (“NFHS”) have adopted regulations that restrict batted ball exit speed, bat weight and bat diameter. Chauvin Decl. at ¶ 3 (Ex. 6). These apply to all bats used in high school baseball in the United States, including New York. 10/23/06 Tr. at 59 (NYC0000223) (Ex. 14).
6. A number of other organizations, including Little League and a number of softball leagues, have also regulated non-wood bats. Darby Decl. at ¶ 5 (Ex. 3).
7. The data on “reaction time” shows that a prepared pitcher will react to batted balls hit at exit speeds identified even for pre-regulation non-wood bats. Breen Decl. at p. 3 (Ex. 4).
8. Any pitcher can in a particular case be unprepared, make a mistake, and be subject to injury, whether the bat is wood or non-wood. Breen Decl. at p. 14 (Ex. 4).

9. The amount of extra time available to the pitcher from a batted ball off a wood bat, even assuming differences in exit speed between pre-regulation non-wood bats and wood bats, is too small – 2.6 hundredths of a second – to give the pitcher any significant additional time to react. Breen Decl. at p. 15 (Ex. 4).

Undisputed Facts Regarding Baseball Bats

10. Bats are made out of wood, composite, or metal material. Chauvin Decl. at ¶ 12 (Ex. 6).

11. Metal and non-wood composite bats are the overwhelmingly popular choice among high school baseball teams. Seiler Decl. at ¶ 10 (Ex. 11); Navarro Decl. at ¶ 3 (Ex. 10); Torres Decl. at ¶ 4 (Ex. 7).

12. There are many ways to regulate bats. This can include, for example, tighter restrictions on variables such as exit speed and the configuration of the bat. Chauvin Decl. at ¶¶ 7, 9 (Ex. 6); Chou Decl. at ¶ 6 (Ex. 5).

13. Bats of particular materials are not uniform in their characteristics or performance. Chou Decl. at ¶¶ 5-6 (Ex. 5).

14. Metal bats vary with respect to the thickness of the walls of the bats and the material used in the bat. Chauvin Decl. at ¶¶ 5-6 (Ex. 6); Chou Decl. at ¶ 6 (Ex. 5).

15. Non-wood composite bats vary in their material in the manner in which the materials are placed together on the bat. Chauvin Decl. at ¶¶ 6, 8, 9 (Ex. 6); Chou Decl. at ¶ 7 (Ex. 5).

16. Wood bats vary widely in quality depending on the particular wood used. Chauvin Decl. at ¶ 12 (Ex. 6).

17. The above differences in structure affect the performance, including the exit speed, of each kind of bat. Chauvin Decl. at ¶ 9 (Ex. 6); Chou Decl. at ¶ 5 (Ex. 5).

18. Metal and non-wood composite bats can be damped to hit with less exit velocity. Chauvin Decl. at ¶ 5 (Ex. 6); Chou Decl. at ¶ 6 (Ex. 5).

19. Wood bats break far more frequently than metal or non-wood bats. Davini Decl. at ¶¶ 11-12 (Ex. 18); Navarro Decl. at ¶ 4 (Ex. 10); Cruz Decl. at ¶ 6 (Ex. 8); Hernandez Decl. at ¶ 8 (Ex. 19).

Undisputed Facts Regarding The Ordinance Provisions

20. The Bat Ordinance permits wood composite bats to the extent that Major League Baseball certifies such bats for use in minor league games. NYC Admin. Code § 10-165(a)(4).

21. Wood composite bats need not be entirely wood. *Id.*

22. Some wood composite bats have the same composite materials as non-wood composite bats except that the wood composite bats contain a 5% wood veneer surface. Chauvin Decl. at ¶ 11 (Ex. 6).

23. A wood veneer surface will have little or no impact on the performance of a composite bat. Chou Decl. at ¶ 8 (Ex. 5); Chauvin Decl. at ¶ 11 (Ex. 6).

Undisputed Facts Regarding Legislative Delegation To A Private Party

24. Major League Baseball is a private organization, and its management is not sworn as public servants or removable as such. Major League Constitution (Ex. 21).

25. The Major League Baseball protocol includes the very same exit speed tests currently used to regulate metal and non-wood composite bats at the high school level. 10/23/06 Tr. at 54 (NYC0003568) (Ex. 15); Chauvin Decl. at ¶¶ 13-14 (Ex. 6).

Undisputed Facts On The Effect Of The Bat Ordinance

26. New York City high school players will purchase non-wood bats for use in games played outside New York City, in order to be competitive. Canale Decl. at ¶ 16 (Ex. 12).

27. There are dozens of high school games played every year in New York City with teams from out of state. Canale Decl. at ¶ 13 (Ex. 12).

28. High school teams based outside the State of New York will be forced to purchase a set of wood bats in order to play high school games in New York City. *Id.*

29. These schools may cancel these games rather than undertake the extra expense for a single game. *Id.*

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